

East Coast Steel, Inc. and Shopmen's Local Union No. 807, of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO. Case 1-CA-31689

June 13, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

On February 28, 1995, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions, and to adopt the recommended Order as modified.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as

¹ The Respondent admits in its exceptions that its failure to bargain with the Union over the decision to lay off employees and its effects violated the Act, but argues that the appropriate remedy for its bargaining violations is the limited backpay remedy set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968) (backpay commences 5 days after the date of the Board's Decision and Order and continues until the occurrence of one of several subsequent events). We find no merit to this contention inasmuch as temporary business conditions not of the Respondent's making (ongoing material shortages) were the primary reason for the layoffs, and the layoffs were not primarily an outgrowth or effect of a permanent management decision that was entrepreneurial in character. In these circumstances, a traditional make-whole remedy is appropriate. *Lapeer Foundry & Machine*, 289 NLRB 952, 954-955 (1988). Compare *Fast Food Merchandisers*, 291 NLRB 897, 902 (1988). See also *Porta-King Building Systems*, 310 NLRB 539 (1993), *enfd.* 14 F.3d 258 (8th Cir. 1994) (full backpay appropriate remedy for failing to bargain over layoffs notwithstanding employer's belated offer to bargain subsequent to the layoffs).

Member Stephens notes that concerns he expressed in *Plastonics, Inc.*, 312 NLRB 1045, 1046 (1993), about a full backpay remedy in circumstances in which layoffs could not possibly have been averted even if the union had been given adequate notice and an opportunity to bargain, are not warranted here. Unlike the instant case, the employer in *Plastonics*, *supra*, had no work for any of its bargaining unit production employees, laid off all of them, and no concessionary alternatives were available to the union. 312 NLRB at 1047, 1049.

² We grant the General Counsel's motion to correct the backpay period for employee Andrew Holbrook since the record shows, consistent with the judge's factual findings at sec. III.B of his decision, that Holbrook was recalled on May 23, 1994. We have modified the judge's recommended order and have substituted a new notice to reflect this correction.

modified below and orders that the Respondent, East Coast Steel, Inc., South Portland, Maine, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(b) of the recommended Order.

“(b) Make whole, with interest, those unit employees who were laid off in the period March 3 to May 23, 1994, for any loss of pay or other employment benefits suffered as a result of this unlawful unilateral action.”

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT, without first giving notice and affording Shopmen's Local Union No. 807, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO the opportunity to bargain in good faith over our decision and its effects, lay off our employees in the following unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its fabrication shop located at One Walker Avenue, South Portland, Maine, including welders, fabricators, laborers, crane operators, painters, fitter/layout employees, shipping/-receiving employees, and truck drivers, but excluding all other employees such as office clerical employees, professional employees, estimators, guards, leadmen and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you in Section 7 of the Act.

WE WILL give notice to the Union before we implement any future economic layoff and give the Union the opportunity to bargain over that decision and its effects, unless we and the Union agree to a different procedure in a written collective-bargaining agreement.

WE WILL make whole, with interest, those employees whom we unilaterally laid off during the period March 3 to May 23, 1994, for any loss of pay or other

employment benefits suffered as a result of our unlawful conduct.

EAST COAST STEEL, INC.

Gerald Wolper, Esq., for the General Counsel.
Alan J. Levinson, Esq., of Portland, Maine, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Shopmen's Local Union No. 807, of the International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO (the Union) filed an unfair labor practice charge on May 12, 1994, against East Coast Steel, Inc. (Respondent or East Coast Steel). Based upon this charge, the Regional Director for Region 1 issued a complaint and notice of hearing on June 24, 1994, alleging that Respondent has engaged in conduct in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). Respondent filed timely answer, wherein it admits, *inter alia*, the jurisdiction allegations of the complaint and the labor organization status of the Union.

Hearing was held in this matter in Portland, Maine, on December 21, 1994.¹ Briefs were received from the parties on or about February 6, 1995. Based upon the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, with an office and place of business in South Portland, Maine, engages in the fabrication of steel products. As noted, Respondent has admitted the jurisdictional allegations of the complaint and accordingly, I find that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE INVOLVED LABOR ORGANIZATION

It is admitted, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Issues for Determination*

The complaint alleges, and Respondent admits, that on March 2, the Union was certified as the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its fabrication shop located at One Walker Avenue, South Portland, Maine, including welders, fabricators, laborers, crane operators, painters, fitter/layout employ-

ees, shipping/receiving employees, and truck drivers, but excluding all other employees such as office clerical employees, professional employees, estimators, guards, leadmen and supervisors as defined in the Act.

The certification followed an election held October 15, 1993, which the Union won 22 to 16. On November 5, 1993, the Union sent a letter to Respondent that, *inter alia*, stated: "We would like to remind you that the conditions of employment in effect on October 15, 1993, should not be altered or changed in any manner, unless specifically approved by this local union." The complaint further alleges and Respondent admits that on March 3, 4, and 30, it laid off employees employed within the bargaining unit. In its answer the Respondent denies that the layoff of such employees is a mandatory subject of bargaining and that it laid off the involved employees without prior notice to the Union giving it an opportunity to bargain over the decision to lay off and the effects thereof. The Respondent also raised several affirmative defenses. These were (1) the complaint does not state a cause of action upon which relief can be granted; (2) Respondent's actions were the result of legitimate economic considerations without any illegal motivation; (3) the Union was given notice and an opportunity to bargain about the layoffs; (4) the Union, at bargaining sessions following the layoffs, waived its right to bargain about the layoffs; (5) at the time of the layoffs, the Union refused to negotiate any interim agreement allowing the Respondent to continue the status quo until the parties reached agreement on a collective-bargaining agreement; and (6) any remedy for a violation of the Act under the circumstances of this case should not include back pay.

With regard to affirmative defense number (1), Respondent admits the layoffs, but just denies the legal consequences flowing from it. Thus, there is no merit to this defense. With regard to affirmative defense number (2), the fact that the reasons for the layoffs were economic in nature does not constitute a valid defense to Respondent's action in this case, as discussed below. With regard to affirmative defense number (3), as discussed below, any notice given to the Union was insufficient to enable the Union to engage in meaningful bargaining prior to the implementation of the decision to lay off employees. With regard to affirmative defense numbers (4) and (5), Respondent presented no evidence in support of these defenses. With regard to affirmative defense number (6), as discussed below, this defense lacks merit.

The issues to be resolved are:

1. Did Respondent lay off employees on March 3, 4, and 30 without prior notice to the Union and without affording the Union the opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct on the employees represented by the Union?

2. Is the layoff of employees included in a collective-bargaining unit represented by the Union a mandatory subject for the purposes of collective bargaining?

3. Does an appropriate remedy for Respondent's conduct include backpay for the employees laid off?

These issues will be discussed below.

B. *Events Leading to the Involved Layoffs*

As pertinent, East Coast Steel fabricates structural steel and bridge products for sale throughout New England and

¹ All dates are in 1994 unless otherwise noted.

New York State. Its customers are contractors and developers in that area. It operates three plants, two in Greenfield, New Hampshire, and the involved plant in South Portland, Maine. One of the Greenfield plants is presently shut down and the other produces primarily structural steel, light bridge products, and miscellaneous metal products. It is a highly automated plant as compared with the involved plant, which produces heavy industrial and bridge products. The employees at this plant are not represented by a union.

Though the two operation plants have the potential for some overlapping production functions, the Greenfield plant is designed to make lighter products and the South Portland plant is intended and equipped to produce much heavier products. For example, the South Portland facility is served by rail, whereas the Greenfield facility is not. The South Portland facility has no automation and is very labor intensive, whereas the Greenfield plant is highly automated and much less labor intensive. In late January, the Respondent placed in service in Greenfield a new machine, costing about \$100,000, that punches holes in metal, allowing the Respondent to shift some work from South Portland to Greenfield. The machine allowed one employee to do in 1 day what it took four South Portland employees to do in 5 days. According to the Respondent's South Portland plant manager, this new machine affected two or three positions at South Portland. These were persons who laid out metal plate and punched it.

There was a steel shortage experienced in New England beginning in early January because of a shutdown of the Bethlehem Steel Mills in Pennsylvania for periods of time beginning in December 1993 and continuing into January and February due to power shortages and a startup problem thereafter. The Respondent began experiencing delays in receipt of raw steel shipments in mid-January and delays continued until May. General Counsel's Exhibit 9 is a letter dated February 14 from Bethlehem Steel to Respondent apologizing for delays in shipments of steel and noting such delays would likely continue. Respondent received another letter dated March 10, from the supplier stating that a shipment of steel plates promised for shipment January 2 was not shipped until February 17. The letter concludes by saying that Bethlehem Steel believed their problems were behind them and normal deliveries would resume in May. These letters were faxed to Respondent on the dates they were written. The February 14 letter was not the first notice that Respondent had received about delays in shipment in the winter of 1993-1994.

The delays in receipt of raw steel was one of the reasons employees were laid off on March 3, 4, and 30. The Respondent considered the shortages of steel experienced in early 1994 unprecedented, as it had not experience prior shortages since 1981. The delays in initial shipments from Bethlehem were aggravated by rail delays and receipt of only partial shipments, precluding fabrication until the entire order was received. With respect to rail shipment, the normal delivery time is 3 weeks, and for several weeks in the winter of 1994, this time was extended to 4 to 5 weeks. Using company documents, the Respondent pointed out that it purchased a large amount of material in November 1993, with an anticipated shipping date between December 25, 1993, and January 1, 1994, and delivery 2 to 3 weeks later.

This document shows shipping orders, order date, promised shipping date, actual shipping date, and date received. For the relevant time frame, it reflects the following:

<i>Order Date</i>	<i>Promised Ship Date</i>	<i>Actual Ship Date</i>	<i>Received</i>
11/24/93	12/25/93	1/12/94	2/16/94
11/24/93	12/25/93	1/18/94	3/1/94
11/24/93	12/25/93	1/5/94	3/9/94
11/24/93	12/25/93	1/6/94	3/3/94
11/24/93	12/25/93	1/10/94	3/16/94
11/24/93	1/1/94	2/2/94	3/9/94
11/30/93	12/25/93	2/3/94	2/8/94
11/30/93		2/4/94	2/4/94
11/30/93		2/3/94	2/8/94
2/9/94	4/2/94	4/6/94	4/18/94
2/9/94	4/2/94	4/4/94	4/14/94
2/9/94	4/2/94	4/6/94	4/18/94
2/9/94	4/2/94	4/4/94	4/14/94

The Respondent let its customers know when it became apparent that delays in receipt of raw material would begin to affect shipment of completed product. Although some of their customers have liquidated damage clauses in contracts with their customers, there is no evidence that such damages had to be paid because of the problems in the winter of 1994.

Another reason and the actual catalyst for at least the March 3 and 4 layoffs involved the elimination of a night shift. In September 1993, Respondent put on a night shift using a leadman and seven or eight employees to facilitate its handling of a particular order. There was some hope this could become a permanent shift; however, the shift was terminated in mid-February. The primary reason for ending the shift was an accident that occurred on February 10, when a crane dropped a steel beam. The lack of full-time crane operators on the shift was the cause of the accident. Respondent, fearful of the danger exposed by the accident, stopped the shift the following week. Respondent's plant manager, while acknowledging the material shortage played a role in all decisions at the time, stated that the safety problem was the cause of the second-shift shutdown.

When the second shift stopped, about February 17 or 18, the Company had to evaluate what to do with the men placed back on the first shift. According to the plant manager, it took about 2 weeks to evaluate the situation. During this period, some of the former second-shift employees did odd jobs and repair work. According to the plant manager, when the second shift ended, it was inevitable that there would be a layoff. The plant management prepared a list prioritizing unit employees by performance, ability, and the positions needed and this list was used to determine who would be laid off. With respect to the layoff in question, Respondent's Exhibit 8 reflects the layoff of Robert McDonald, Timothy McCann, Douglas Gladden, and Charles Grover on March 3, and the layoff of Raymond Howland and Andrew Holbrook on March 4. All but Holbrook were recalled May 9, with Holbrook returning to work on May 23. The exhibit also reflects

the layoff of Kenneth Fowler, Michael Becker, and Loring Morrell on March 30, with the three being recalled May 9.²

On brief, the Respondent asserts that the March 3 and 4 layoffs were the result of the combined effect of the new machine purchase, the termination of the second shift, and the delays in receipt of material. The March 30 layoff was the result of the ongoing delays in receipt of material to fabricate.

C. The Respondent's Communications with the Union about the Layoffs

The Respondent laid off employees on March 3, 4, and 30, partially because of the shortages and/or delays in delivery of steel. This would have impacted its ability to use the employees coming off the canceled second shift. No notice was given by Respondent to the Union about the layoffs prior to the occurrence of the layoffs on March 3 and 4. As noted below, notice of the March 30 layoff was given to the Union on March 29, though no opportunity was given to bargain over the decision to lay off or its effects. The employees laid off at South Portland were recalled May 9 by shifting some Greenfield work to South Portland.

After certification on March 2, the first meetings between Respondent and the Union for negotiations occurred April 5. This meeting was set up by a call between the Union's representative and that of the Respondent on March 9. The Union was not notified about the layoffs of March 3 and 4 on that date or any prior date. On March 29, the parties again spoke by phone. In this call, the company representative stated that the Company had encountered problems with delivery of steel and it was affecting their ability to get work out. Because of this it was going to be necessary to layoff three employees either that day or the next day. The Union responded that the Company had previously unilaterally laid off unit employees without discussion with the Union, and that the Company was not affording the Union the opportunity to discuss the most recent layoff decision and its effects. The layoffs occurred the next day.

At the April 5 meeting between the parties, the Union expressed its concern over the layoffs and the lack of opportunity to bargain over the decision to layoff and the effects of the layoffs. The Company responded that the layoffs were based on a lack of work and that was the cause of the decision to layoff. The Company expressed its position that it had the right to make the layoffs and would not discuss the matter further. The Union stated that it had an ongoing request to negotiate the matter.

On April 7, the Union sent Respondent a letter further insisting that no unilateral changes in working conditions, including layoffs, be made by the Respondent without affording the Union an opportunity to bargain over the decision and its effects.

On April 28, another meeting between the parties took place. The Union renewed its request that the Company discuss the effects of the earlier unilateral layoffs. The Union also demanded that the affected employees be reinstated and

paid backpay. The Company denied the request, saying that it was not going to negotiate layoffs after the fact.

On May 18, another meeting took place. The Union raised the matter of the layoffs and was advised that the laid-off employees had been recalled. The Union said it wanted to negotiate over the period of time they had been laid off and the Company refused.

D. Conclusions with Respect to the Issues

The Board has consistently held that an employer's decision to lay off employees for economic reasons is a mandatory subject of bargaining and that an employer must provide notice to and bargain with the Union concerning the decision to lay off bargaining unit employees and the effects of that decision. *Plastonics, Inc.*, 312 NLRB 1045, 1048 (1993); *Stamping Specialty Co.*, 294 NLRB 703 (1989); *Lapeer Foundry & Machine*, 289 NLRB 952 (1988). I believe it is clear in this case that the layoffs in question were motivated by economic reasons, that is, lack of raw materials to sustain production because of delays in shipments and deliveries, and not by any change in the scope and direction of the business. Respondent asserts, inter alia, that the layoffs were occasioned by the shift of a metal punching function from South Portland to Greenfield following the purchase of a new machine for Greenfield. This shift of function affected two or three positions at South Portland. Significantly, this shift of function occurred in early February, and occasioned no layoffs at that time. The Respondent was able to absorb at that point the loss of work at South Portland without resorting to layoffs. Thus, I find the reason for the layoffs to be elsewhere.

The discontinuance of the night shift because of the danger of operating it without full-time crane operators was the event that triggered the layoffs some 2 weeks hence.³ The discontinuance of the night shift is also tied to the shortage of raw materials. If there had been a steady flow of raw materials, there may well have been enough work to justify placing more crane operators on the night shift and continue it safely. The fact, however, that there was no production work for the night-shift employees when they returned to day shift indicates to me that the primary problem was an inability to sustain production because of material shortages.

The Board has held that the establishment of "compelling economic circumstances" may excuse a company's failure to bargain over a layoff decision, but that such an exception shall only apply in "extraordinary situations." *Lapeer Foundry*, supra. The only "extraordinary situation" that can be said to exist in this case is the delay in receipt of raw materials that disrupted production. Yet, this delay was a fact of life for the Respondent beginning in January. There was no showing that something out of the ordinary occurred on March 2 that would compel layoffs on March 3 or 4, or similarly, an event occurred on March 29 compelling the March 30 layoffs. Indeed, the testimony of the plant manager demonstrates that it was certain that a layoff would occur at some point when the night shift ended on February 17 or 18

²I do not believe it was agreed that these represent all employees laid off, and there was also some question was raised in the record whether one or more of the laid-off employees was a supervisor. These matters can be handled at the compliance stage of this case.

³Although it is not part of the complaint allegations, there is a case to be made that the decision to end the night shift would be a mandatory subject of bargaining and Respondent's failure to give notice to the Union and bargain over this decision is also a violation of the Act.

and that the material shortage that occasioned the March 30 layoff had been a problem for months.⁴

Given the fact that the delay in receipt of the raw materials was an ongoing problem, and that the night shift was canceled over 2 weeks before the first layoffs, I do not believe that Respondent has demonstrated that its situation should fall within the exception excusing the Company's failure to notify the Union and bargain with it over the decision to layoff and the effects thereof. There is simply no showing of urgency or that immediate harm would result that would preclude taking time to bargain with the Union. For example, the Respondent knew at least 2 weeks prior to the March 3 and 4 layoffs that they would occur at some juncture. There is no explanation why bargaining with the Union could not have taken place in that 2-week timeframe. See *Plastonics, Inc.*, supra; *Angelica Healthcare Services*, 284 NLRB 844, 853 (1987). Moreover, as stated by the Board in *Lapeer Foundry & Machine*, supra, "In light of the economic circumstances motivating a company's decision to lay off employees, however, we will require that negotiations concerning this decision occur in a timely and speedy fashion. Thus should a Union fail to request bargaining in a timely fashion once the company has provided it with notice of the layoff decision, we will find that the company has satisfied its bargaining obligation." Id. at 954.

I believe that the Respondent could have given notice and engaged in timely bargaining over the decision before it found it necessary to lay off its employees. It was protected from inaction or delay on the part of the union as noted in *Lapeer Foundry & Machine*, supra. No notice whatsoever was, however, given to the Union with respect to the first layoffs and notice of the second round of layoffs was presented as a *fait accompli*, with no opportunity to bargain over the decision being given.⁵ As stated by the Board in *Lapeer Foundry & Machine*: "Moreover, the employer's duty to bargain will require meaningful negotiations concerning the decision to lay off, and not merely the notification to the union that it is a *fait accompli*." Id. at 954.

Thus, by not giving the Union timely notice of its decision to lay off employees on March 3, 4, and 30, and by failing to afford the Union an opportunity to engage in meaningful negotiations regarding the decisions and effects of those decisions on unit employees, Respondent violated Section 8(a)(5) and (1) of the Act. *Plastonics Inc.*, supra; *Stamping Specialty*

Co., supra; *Lapeer Foundry & Machine*, supra; *Norco Products*, supra; and *Angelica Healthcare Systems*, supra.

Further, the record established that upon receiving the initial notification by telephone about the layoffs on March 29, the Union immediately requested bargaining about the decision to lay off employees and the effects of the layoffs in the same conversation. Additionally, the Union made such requests in its letter of April 7 and at the negotiation sessions of April 5 and 28 and May 18. These requests were met with unequivocal refusals by Respondent to bargain about this issue. This latter conduct further amplifies the fact that the Union was presented with a *fait accompli* and demonstrates that Respondent never had any intention to bargain about the layoff decision and its effects on employees. Thus, Respondent violated Section 8(a)(5) and (1) of the Act by this conduct. *Plastonics, Inc.*, supra.

Although Respondent presented no evidence that the Union waived its right to bargain about this issue, the Union's notification of its desire to bargain over any changes in working conditions on November 5, 1993, and the requests to bargain by the Union on March 29, April 5, 7, and 28, and May 18 after the Union received notice of the layoffs is conclusive evidence that the Union did not waive its right to bargain. It is well settled that a waiver of bargaining rights must be "clear and unmistakable." *Norco Products*, supra at 1422 fn. 9.

As noted earlier, the Respondent has urged that no award or at most, a limited award of backpay be made if it is found to have violated the Act. The traditional remedy for unlawful unilateral layoffs, based on legitimate economic concerns, includes requiring the payment of full backpay, plus interest, for the duration of the layoff. *Plastonics, Inc.*, supra; *Lapeer Foundry & Machine*, supra at 955-956. I find no reason to make an exception in this proceeding. Respondent made not one but two conscious decisions to lay off unit employees without bargaining with the Union in the face of continuous requests to do so by the Union. Respondent could argue that the first instance of failure to notify and bargain was an oversight, but its subsequent conduct demonstrates that it was a willful violation of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By laying off its unit employees on March 3 and 4, 1994, without giving the Union notice of its intention to do so, and by laying off its unit employees on March 30, 1994, with inadequate notice, and without affording the Union an opportunity to bargain in good faith over those decisions and their effects, the Respondent has engaged in conduct in violation of Section 8(a)(5) and (1) of the Act.

4. The unfair labor practices found to have been committed by Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in conduct in violation of Section 8(a)(5) and (1) of the Act, it is ordered

⁴Board law requires an employer, after reaching a decision concerning a mandatory subject, to delay implementation of the decision, until after it has consulted with the bargaining representative, but does not require that the employer delay the decision-making process itself. *Haddon Corp.*, 300 NLRB 789, 790 fn. 8 (1990).

⁵Respondent's obligation under Sec. 8(a)(5) of the Act to refrain from making unilateral changes in working conditions commences at the time of an apparent ballot victory for a labor organization, rather than at the time of its official certification. *Consolidated Printers*, 305 NLRB 1061, 1067 (1992); *Norco Products*, 288 NLRB 1416, 1422 (1988); *Angelica Healthcare Systems*, supra at 852. Here the Union had even notified the Respondent shortly after the election that Respondent should not make any changes in working conditions without first notifying the Union. The layoffs on March 3 and 4 occurred after the Board issued its certification on March 2, and even assuming that Respondent had not received the certification by March 3, it still had the duty to notify and bargain with the Union prior to the implementation of the March 3 and 4 layoffs.

to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

It is recommended that Respondent be ordered to make whole, with interest, those unit employees who were laid off in the period from March 3 to May 9, 1994, for any loss of pay or other employment benefit suffered as a result of this unlawful unilateral action. Backpay should be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent should also be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁶

ORDER

The Respondent, East Coast Steel, Inc., South Portland, Maine, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Laying off its unit employees without first giving notice of its intention to do so to the Union and affording the Union an opportunity to bargain in good faith over that decision and its effects.

(b) In any like or related manner interfering with, restraining, or coercing you in the exercise of rights guaranteed you by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

⁶If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Give notice to the Union before it implements any future economic layoff and give the Union the opportunity to bargain over that decision and its effects, unless the parties agree to a different procedure in a written collective-bargaining agreement.

(b) Make whole, with interest, those unit employees who were laid off in the period March 3 to May 9, 1994, for any loss of pay or other employment benefits suffered as a result of this unlawful unilateral action.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its South Portland, Maine facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁷If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."